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BRIEFING PAPER

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Teachers Pensions – 2015 onwards

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Summary

The Teachers' Pension Scheme is a public service pension scheme. Like the other main public sector schemes (apart from the Local Government Scheme) it operates on a pay-as-you-go basis, which means that contributions from employers and employees are made to the sponsoring government department, which meets the cost of pensions in payment.

Reforms were introduced from April 2015 under the *Public Service Pensions Act 2013* included: linking the pension age to the State Pension age; a shift to providing pensions based on career average earnings rather than final salary; and a cap on employer contributions to apply in future. Active members were transferred to the new scheme except those covered by transitional protection arrangements for those 'closest to retirement', who were allowed to remain in their scheme either until retirement or for a limited period, depending on their age. There are factsheets explaining how the scheme changed in 2015.

The rules are in *Teachers' Pensions Regulations 2014 (SI 2014/512)* and *Teachers Pensions Regulations 2010 (SI 2010/990).*

This note looks at how the scheme has developed, the debate around the main reforms introduced in 2015 and some ongoing issues.

The development of the scheme is discussed in more detail in Library Note SN 405 Teachers' Pensions – background.

1. Background

The Teachers' Pension Scheme is a statutory, unfunded, defined benefit public service pension scheme. This briefing paper concentrations on the scheme for teachers in England and Wales. There are separate schemes for Scotland and Northern Ireland.

1.1 Teachers' Pension Scheme (England and Wales)

The Teachers' Pension Scheme (England and Wales) is split into three distinct sections, with different normal pension ages (NPA):[1]

- The NPA 60 section caters for those who entered the scheme before 1 January 2007 and has a normal pension age of 60.
- The NPA 65 section caters for those who entered the scheme for the first time on or after 1 January 2007 but before 1 April 2015 or who transitioned from the NPA 60 section following 2007 scheme reform and have a normal pension age of 65.

Both of these sections provide benefits based on final salary and length of service.

The 2015 section caters for those who entered the scheme for the first time on or after 1 April 2015, and those who transitioned from the NPA 60 and NPA 65 sections following the latest scheme reforms. The 2015 section provides benefits based on career average earnings and has a normal pension age equal to state pension age.[2]

The three sections reflect reforms introduced in 2007 and 2015:

- Reforms introduced in January 2007 included an increase in the NPA for new entrants, from 60 to 65. The detailed rules are in the *Teachers Pensions Regulations 2010 (SI 2010/990)* made under the *Superannuation Act 1972.*
- The *Public Service Pensions Act 2013* required the introduction of new public service schemes from April 2015. Key elements of the reforms included: linking individuals' NPA to their State Pension age; a shift to providing pensions based on career average earnings rather than final salary. Active scheme members as at April 2015 transferred to the new scheme except those covered by transitional protection for those 'closest to retirement'. The rules for this section are in the *Teachers' Pensions Regulations 2014 (SI 2014/512).*

Guides to the scheme and factsheets explaining how the scheme changed in 2015 are on the Teachers' Pensions website.

1 The normal pension age is the earliest age at which an occupational pension can be drawn unreduced, other than on ill-health grounds
2 Teachers' Pension Scheme (England and Wales) Annual Report and Accounts for year ended 31 March 2019, HC 2407, July 2019

Scheme rules

The table below shows the main features of the NPA 60 and 65 sections of the schemes for Teachers in England and Wales:[3]

	NPA 60 Section	NPA 65 Section
Basis of provision	Final salary	Final salary
Contracted-out/in prior to 2016	Contracted-out*	Contracted-out*
Normal pension age (NPA)	60	65
Pension accrual rate	1/80	1/60
Retirement lump sum accrual rate	3 x pension plus commutation at £12: £1 pa	Cash by commutation only (£12: £1pa)
Final pensionable pay	Better of: a) last 12 months' pensionable pay; b) average of best 3 consecutive years' pensionable pay in last 10 years (revalued in line with the Pensions Increase (PI) Act to date of exit	
Dependant benefits	50% of member pension (pre-commutation)	37.5% of member penson (pre-commutation)
Ill health pension	Total incapacity benefit - pension based on actual service plus half of potential service to NPA. Incapacity benefit - pension based on actual service (but no reduction for immediate payment)	
Pension increases	In payment - increased in line with the *Pensions Increase (PI) Act* on excess over GMP. In deferment - total pension increased in line with the PI Act.	

*future benefits unaffected by contracted-out status

	2015 scheme
Basis of provision	Career average with revaluation of CPI + 1.6% pa whilst in service
Contracted-out/in prior to 2016	Contracted-out*
Normal pension age (NPA)	Higher of a members State Pension age and 65
Pension accrual rate	1/57
Retirement lump sum accrual rate	Cash by commutation only (£12: £1pa)
Final pensionable pay	Not applicable
Dependant benefits	37.5% of member pension (pre-commutation)
Ill health pension	Total incapacity benefit - incapacity benefit plus 50% prospective service to NPA, multiplied by 1/57 of the member's annual rate of pensionable earnings. Incapacity benefit - accured pension, no reduction
Early retirement	Benefits reduced for early payment. The reduction is actuarially neutral on a deferred benefit basis, except that for retirements directly from active status the reduction applying to the period between 65 and NPA is 3% a year (up to a maximum of 3 years)
Pension increases	In payment - increased in line with the *Pensions Increase (PI) Act* on excess over GMP. In deferment - total pension increased in line with the PI Act.

* benefits unaffected by contracted-out status

3 GAD, Teachers' Pension Scheme. Actuarial valuation as at 31 March 2016. Report on Membership Data, March 2016; Data Report, Appendix H

The rate of members' contribution is in regulations.[4] As discussed below, member contribution rates increased by 3.2% between 2012/13 and 2014/15. Current rates are in the table below:[5]

Teachers' Pension Scheme (England and Wales)

Member contribution rates 2015/16 to 2020/21

2020/21 thresholds	% contribution rate
£0 to £28,168.99	7.4
£28,169 to £37,918.99	8.6
£37,919 to £44,960.99	9.6
£44,961 to £59,587.99	10.2
£59,588 to £81,254.99	11.3
£81,255 and over	11.7

1.2 Scotland

The Scottish Teachers Superannuation Scheme is managed by the Scottish Public Pensions Agency.

Scottish Ministers have power to make regulations for the scheme for teachers in Scotland, within the framework set by the *Public Service Pensions Act 2013.* The Act sets key features of the 2015 schemes such as that they must provide pension benefits based on career average revalued earnings (CARE) rather than final salary and that members have a pension age linked to their State Pension age.[6]

There are currently two occupational pension schemes for teachers in Scotland, the Scottish Teachers' Superannuation Scheme (STSS) and the Scottish Teachers' Pension Scheme 2015 (STPS 2015).

The key features of the scheme introduced in April 2015 are in line with those introduced in England and Wales.[7] Member contribution rates in are tiered according to pay, as in England and Wales, but weighted more towards higher contributions for higher earners – ranging from 7.2% to 11.9%.[8]

The rules for the schemes are on the SPPA website. For more on the background to the reforms in Scotland – see SPICe briefing paper Pensions (June 2014).

4 SI 2014/512, reg 185; SI 2010/990, regs 18 and 27 and Sch 3; SSI 2005/393, reg C3
5 Teachers' Pensions website
6 Public Service Pensions Act 2013, s8-10
7 EIS Scottish Teachers' Pension Scheme 2015; SPPA website, 2015, Scottish Teachers' Pension Scheme 2015 - FAQs
8 SPPA, Teachers – Your Pension Contributions

1.3 Membership

The most recent membership figures are in the table below:[9]

	E&W (31/03/18)	Scotland (31/03/19)
Active members	674,067	74,497
Deferred members	629,125	20,583
Pensions in payment (including dependants)	717,037	82,521

Teachers' Pension Scheme (E&W). Annual Report and Accounts 2018-19
Scottish Teachers' Pension Scheme. Annual Report and Accounts 2018-19

More detailed information is in the report on membership data produced by the Government Actuary's Department in connection with the valuation of the scheme as at 31 March 2016.

9 Teachers' Pension Scheme (England and Wales) Annual Accounts for year ended 31 March 2019; Scottish Teachers' Superannuation Scheme Annual Report and Accounts 2014-15

2. Issues

2.1 McCloud – legal challenge to 2015 reforms

As discussed in section 3 below, the Coalition Government introduced reforms to public service pensions in April 2015 under the *Public Service Pensions Act 2013*. New schemes were introduced, providing pension benefits based on career average revalued earnings (CARE) rather than final salary and with a pension age linked to individual's State Pension age (except for the uniformed services, which had a pension age of 60). Existing scheme members were transferred to the new schemes, except for those covered by transitional protection arrangements for those 'closest to retirement.'[10]

As discussed below, in July 2019, the Court of Appeal held that the 'transitional protection' offered to some members as part of the reforms amounted to unlawful discrimination. While discussions on potential remedies are ongoing, the Government put on hold the operation of another part of the 2015 reforms – the cost control mechanism.

Cost control mechanism

For more on the background, see

Public service pensions: the cost control mechanism (CBP 6971, Feb 2020)

The 2015 reforms were designed to manage some of the costs and risks to the Exchequer of providing public service pensions (related to salary and rising longevity, for example). As an added safety valve, the Commission recommended that the Government should set a fixed cost ceiling on the proportion of pensionable pay that they would contribute, on average, to employees' pensions over the long-term. If this was exceeded, then there should be a consultation process to bring costs back within the ceiling, with an automatic default change if agreement cannot be reached.[11] The Government legislated in section 12 of the *Public Service Pensions Act 2013* for a 'cost control mechanism', which would operate symmetrically, so that if valuations showed that scheme costs had risen or fallen outside of a target rate, steps would have to be taken to bring them back to target.

In September 2018, the Government said that initial results of the first post-reform valuations, indicated that members should get "improved pension benefits for employment over the period April 2019 to March 2023."[12]

McCloud/Sargeant

On 30 January 2019, the Government said it was pausing the operation of the cost control mechanism pending the outcome of the Court of Appeal judgement in McCloud v Ministry of Justice.[13] This held that the 'transitional protection' offered to some members as part of the reforms amounted to unlawful discrimination. Having been refused leave to

[10] *Public Service Pensions Act 2013*, sections 18 to 20
[11] Independent Public Service Pensions Commission: interim report, October 2010, recommendation 12
[12] HC Deb 6 September 2018 c13WS
[13] HCWS1286, 30 January 2019

appeal to the Supreme Court, the Government accepted that the issues should be addressed across public service schemes:

> The ruling relates to the 'transitional protection' offered to some members when the reformed schemes were introduced. In order to ensure people close to retirement age were treated fairly, the government agreed to 'transitional protection', which broadly permitted those members who were closest to retirement at the time new pension schemes were introduced to remain members of their respective old schemes. The court has found that those too far away from retirement age to qualify for 'transitional protection' have been unfairly discriminated against. As 'transitional protection' was offered to members of all the main public service pension schemes, the government believes that the difference in treatment will need to be remedied across all those schemes. This includes schemes for the NHS, civil service, local government, teachers, police, armed forces, judiciary and fire and rescue workers. Continuing to resist the full implications of the judgment in Court would only add to the uncertainty experienced by members.[14]

While these discussions are underway, the cost control mechanism remains paused as the value of pension schemes to members cannot be assessed with certainty.[15]

Trade unions across the public sector objected to the pause. The National Education Union (NEU) referred to the Coalition Government's commitment that the schemes "would not be subject to any further political changes for a 25-year period," and said it would "not accept any attempt to worsen the schemes in order to recoup the cost of compensation or for any other reason."[16]

The Annual Report and Accounts for the year ended March 2019 include an estimated additional liability, potentially arising from the McCloud/Sargeant judgment.[17] The Department for Education has engaged in technical discussions with unions and employers on possible solutions. This is to be followed by a public consultation, which will set out in more detail the Government's proposals for addressing the discrimination, including who is in scope.[18]

2.2 Employer contribution rates

Like most of the public service schemes, the Teachers' Pension Scheme operates on a pay-as-you-go (PAYG) basis.[19] This means that employer and employee contributions are paid to the sponsoring government department, which pays out pension benefits, netting off the contributions received.

14 HCWS 1275 15 July 2019
15 PQ 14694 13 February 2020
16 NEU, Judges and firefighters age discrimination case, August 2019
17 Teachers' Pension Scheme – Annual Report and Accounts, HC 2407, August 2007
18 Teachers' Pensions website – update on the McCloud case
19 The main exception is the Local Government Pension Scheme, which is funded. The pension scheme for MPs (the Parliamentary Contributory Pension Fund) is also funded.

The employee contribution rate is in regulations.[20] That for employers is set on the basis of triennial actuarial valuations.[21] It has two parts:

> The contribution rate has in two parts – a standard rate to cover the cost of accruing benefits, and a supplementary contribution to fund any deficit: First, a standard contribution rate (SCR) is determined. This is the contribution, expressed as a percentage of the salaries of teachers and lecturers in service or entering service during the period over which the contribution rate applies, which if it were paid over the entire active service of these teachers and lecturers would broadly defray the cost of benefits payable in respect of that service. Secondly, a supplementary contribution is payable if, as a result of the actuarial investigation, it is found that accumulated liabilities of the Account for benefits to past and present teachers, are not fully covered by standard contributions to be paid in future and by the notional fund built up from past contributions. The total contribution rate payable is the sum of the SCR and the supplementary contribution rate.[22]

The valuation of the scheme as at March 2012 determined the rate of employer contribution for the period 2015 to 2019, at 16.4% of pensionable pay.[23]

The contribution rate for the period 2019/20 to 2022/23 was set based on the valuation of the scheme as at March 2016. This took into account reductions in the SCAPE discount rate announced in Budget 2016 (from 3 to 2.8%) and in September 2018, when there was a further reduction to 2.4%.[24] Employers expressed concern because, other things being equal, a lower discount rate results in higher contribution rates at the next scheme valuations.

In September 2018, the Government said that departments and devolved administrations would need to meet the full increase in costs deriving from the 2016 Budget announcement. It would support them with the increased cost resulting from the 2018 announcement in the 2019/20, but not necessarily beyond that.[25]

Following consultation, the Government said it would support some institutions with the costs but not others.

The Department for Education launched a consultation on 15 January 2019 regarding the impact of the changes in England." It explained that the employer contribution rate required for the period from 1 April 2019 to 31 March 2023 was 22.8%. However, 23.6% would be required, due to the delay in implementing the increase to September 2019.[26]

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20 SI 2014/512, reg 192
21 *Teachers' Pensions Regulations 1997* (SI 1997 No. 3001), regulation G4
22 DCSF, Teachers' Pension Scheme (England and Wales) – Financial Note, May 2008
23 The Teachers' Pension Scheme (England and Wales) Annual Report and Accounts for the year ended March 2019, p10
24 HCWS 6 September 2018 c13WS; letter to the TUC
25 HC Deb 6 September 2018 c13WS
26 DfE, Funding increases to teachers' pensions employer contributions, January 2019; PQ 191299 19 November 2018

The Department estimated that the increase in costs from the discount rate reductions would be £1.1bn, distributed across sectors as follows:[27]

Education sector	Costs in 2019-20, from 1 Sept implementation (£m)
State-funded schools	830
Independent schools	110
FE	80
HE	80

In its response to the consultation, the Government confirmed that it would provide support for the increased costs to state-funded schools and FE colleges for 2019/20, consistent with its "proposal to support institutions most directly funded by Government grant."[28] Spending Review 2019 announced that this additional support for schools would continue to 2022/23. Each year, the government would "provide almost £1.5 billion of funding to compensate schools for the increased cost of employer pensions contributions."[29] Although the judgment was 'finely balanced', it had decided it would not fund HE institutions at this stage.[30] It had also decided not to fund independent schools, but would consider allowing a phased withdrawal from the TPS:

> We note the cost pressures that the increases in employers' contributions will place on Independent Schools, as well as the desire from Independent Schools to attain greater flexibility over their status in the scheme. The Department also notes the potential effects of this change, particularly redundancies or reduction in specialist provision. As shown above, respondents' main focus was less on the Department providing funding to Independent Schools for these costs, but on Independent Schools' continued membership of the scheme.
>
> **The Department therefore confirms the funding rationale set out in the consultation document and will not fund Independent Schools at this stage. However, by way of a potential mitigation to the risks identified, the Department will begin work to consider allowing Independent Schools to leave the scheme via phased withdrawal.** This potential phased withdrawal approach would enable a school to retain its current teacher members in the scheme but would close the scheme to new entrants. Therefore, a school could remain in the scheme but close the scheme to applications from teachers yet to join the school. This approach would be optional to all Independent Schools who are members of TPS. The Department accepts there is a case for this and will consult with members, employers and other stakeholders at the earliest opportunity. A statutory consultation would be required before any amendments to the scheme regulations are made.[31]

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27 See paras 4.6 and 4.12 for details of the organisations covered

28 DfE, Funding increases to teachers' pension employer contributions. Government response to consultation, April 2019

29 HM Treasury, Spending Review 2019, para 2.6

30 Ibid

31 Ibid

3. Reforms

3.1 The Labour Government's reforms

Changes to the scheme were introduced on 1 January 2007, affecting new entrants from that date. Key features were that:[32]

	Pre 2007 members	New entrants from 1 January 2007
Normal Pension Age	60	65
Members' contributions	6.4%*	6.4%*
Employer contributions	14.1%	14.1%
Members' Pension Benefits	1/80th final salary for each year reckonable service	1/60th for each year of reckonable service
Lump sum	Three times the pension (and more scope to take a higher tax-free lump sum and a lower level of pension)	Option to give up £1 of annual pension in exchane for £12 of tax free lump sum, up to a maximum of 25% of the fund value

**Variable at future valuations through the cost sharing mechanism*

For more detail, see

Library Briefing Paper Teachers Pensions – background (CBP 405, Sept 2013); and Public service pensions – cost capping and cost sharing (CBP 5252, Dec 2011)

This agreement was introduced as part of the package of reforms which came into force on 1 January 2007.[33] The Labour Government expected it to "deliver long-term sustainability through the reduction of taxpayer exposure to risks, principally those associated with improvements in longevity over and above improvements already anticipated."[34]

The National Audit Office (NAO) looked at changes introduced the Teachers', NHS and civil service schemes in 2007-08. It concluded that:

> As a result of the changes, which are on course to deliver substantial savings, long-term costs are projected to stabilise around their current levels as a proportion of GDP. The changes are also set to manage one of the most significant risks to those costs, by transferring from taxpayers to employees additional costs arising if pensioners live longer than is currently projected.[35]

It expected the changes to "reduce annual costs to taxpayers in 2059-60 by 14 per cent compared to what they would have been without the changes." [36]

3.2 Independent Public Service Pensions Commission

In June 2010 Budget, the Coalition Government announced the establishment of the Independent Public Service Pensions Commission, to be chaired by former Labour Work and Pensions Secretary of State,

32 For more detail, see Government Actuary's Department, Teachers Pension Scheme (TPS) Key features pre-post 1 January 2007
33 *Teachers Pensions Regulations 1997* (as amended), regulation G5
34 HC Deb, 26 July 2007, c105WS
35 NAO, The impact of the 2007-08 changes to public service pensions, HC 662, Session 2010-2011, para 2.1
36 Ibid, Executive Summary, para 5 and para 2.7

Lord Hutton of Furness. It would "undertake a fundamental, structural review of public service pension provision by Budget 2011."[37]

At the same time, the Government announced a switch in the measure of prices used for pension increases – from Retail Prices Index (RPI) to Consumer Prices Index (CPI).[38] This was controversial because the CPI tends to produce lower increases. The change was unsuccessfully challenged in the courts by trade unions representing public servants.[39]

Interim report – contribution rate increases

The Commission's Interim Report was published on 7 October 2010. It recommended that the most effective way of making savings in the short-term was to increase member contribution rates and that there was a case for doing so. In response, the Government announced that it would increase member contribution rates by an average of 3.2 per cent across public service schemes, except for the armed forces. The increases were phased-in over the period 2012/13 to 2014/15.[40]The policy would be phased-in and designed to protect the low paid and with a view to mitigating a possible increase in opt-out rates. It was expected to lead to savings of £2.8 billion a year by 2014-15, to be phased in from April 2012.[41]

The Department for Education consulted on the increases.[42] Teaching unions, such as the NUT and NASUWT oppose the increases, arguing that they had "nothing to do with pension scheme funding. Instead it is a levy on teachers' pay for the costs of the recession."[43]

The Proposed Final Agreement for the new Teachers Pension Scheme to be introduced from 2015 included a proposal for "member contributions on a tiered basis to produce a total yield of 9.6% of total pensionable pay in the Scheme."[44] The rates are in regulations (SI 2014/512, reg 185), set under the *Public Service Pensions Act 2013* (s3). The schedule of contributions originally proposed was amended before implementation in response to concerns. Contribution rates in the previously existing scheme (where some members remained due to transitional protection) were changed in line with this.[45]

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37 HM Treasury, Budget 2010, HC 61, June 2010
38 Ibid, p2
39 FDA & Ors, R (on the application of) v Secretary of State for Work and Pensions & Anor [2012] EWCA Civ 332 (20 March 2012)
40 HM Treasury, Spending Review 2010, October 2010, para 1.94; Library Note SN 6137 Public service pension contributions (April 2012)
41 HL Deb, 7 February 2011, cWA31
42 DFE, Consultation on Proposed Increases for Members of the Teachers' Pension Scheme, July 2011. See also DfE, 'Consultation on Proposed Increases to Contributions for Members of the Teachers' Pension Scheme and the Removal of Regulations Governing Scheme Valuations', 26 October 2012; DfE New Deal pension changes and increases to member contributions, November 2013 http://web.archive.org/web/20131120025903/https:/www.gov.uk/government/consultations/new-fair-deal-and-increases-to-member-contribution
43 NASUWT and NUT, DfE Consultation – Proposals for implementation of the reformed Teachers' Pension Scheme in 2015, June 2013
44 DfE, Teachers' Pension Scheme – Proposed Final Agreement, March 2012
45 SI 2010/990 as amended by SI 2014/2651, reg 23

Final report – longer term structural reforms

In its final report, published in March 2011, the Commission said its aim was to design a structure that would share the risks and costs of public service pensions between employees and government fairly. It said that moving to schemes providing pension benefits based on career average revalued earnings, rather than final salary, would remove much of the salary risk associated with public service pensions.[46] However, it said the greatest risk facing public service schemes – rising longevity – should be addressed through increases in the Normal Pension Age (NPA).[47] For more on the background, see Library Briefing Paper CBP 5768 Public service pensions – the 2015 reforms (April 2020).

3.3 Taking the reforms forward

The Coalition Government accepted the recommendations of the Commission's final report as a basis for consultation with the trade unions.[48]

On 19 July 2011, the then Chief Secretary to the Treasury, Danny Alexander said a series of meetings with the TUC had established a basis for agreement in several areas, but that differences remained on some of the key recommendations.[49]

Teaching unions described the talks as a sham, with the only issue to be decided being how much more teachers will pay and how much longer they have to work to secure inferior benefits.[50]

On 2 November 2011, the Chief Secretary to the Treasury announced a new offer to the unions, including:

- **A more generous accrual rate**. In October it had proposed "cost ceilings based on Lord Hutton's recommendations that generate an accruals rate of 1/65th for the new schemes." It was now proposing a cost ceiling of 1/60th of average salary accruing for each year worked. This represented an 8% improvement in the Government's offer.
- **Transitional protection.** Scheme negotiations would be given the flexibility outside the cost ceiling, to ensure that anyone with 10 years or less to their pension age on 1 April 2012 would see no change in when they retire, nor any decrease in the amount of pension they receive at their current normal pension age.[51]

He said reform along the lines proposed could endure for 25 years or longer.[52] The offer was conditional on agreement being reached - "an

46 Independent Public Service Pensions Commission: Final Report, Mar 2011, para 4.25
47 The earliest age at which in the course of events, a scheme member may retire with payment of his or her unreduced accrued superannuation benefits (see Glossary on page 199 of the Commission's report)
48 HM Treasury, Budget 2011, para 1.132
49 HC Deb, 19 July 2011, c91-4
50 Joint statement from ATL, NUT and UCU 19 July 2011
51 HC Deb, 2 November 2011,c928
52 HC Deb, 2 November 2011,c930

agreement by the end of the year on the heads of terms on a scheme-by-scheme basis."[53]

The Government set out the key features of its preferred design for the new schemes for teachers, NHS, civil service and local government. However, because the Government recognised that different designs might suit different workforces, it set cost ceilings (expressed as a proportion of pensionable pay) within which alternatives could be considered. For the Teachers' scheme, it proposed a gross cost ceiling of 21.7%, with contributions of 12.1% from employers and 9.6% from employees.[54]

Heads of agreement

On 20 December, the Chief Secretary to the Treasury confirmed that changes already announced – the switch to the CPI and the contribution increases for 2012 - would go ahead. In addition, "Heads of Agreement" had been established, which he said meant the offer made in November had been "secured". In the new schemes, individuals would have their normal pension age aligned with their State Pension age. There would be transitional protection for those closest to retirement:

> Those within 10 years of their normal pension age on 1 April 2012 would retain their existing entitlements, i.e: they would remain in their current existing scheme until they draw benefits or are entitled to do so. Those within 13.5 and 10 years would remain in the current scheme on a tapered basis.[55]

A key change from the November proposals was the accrual rate:

> In education, we have agreed to a revised revaluation factor of CPI plus 1.6%, allowing for the accrual rate to be improved to 1/57th, along with modest improvements to early retirement factors.[...] All those heads of agreement are within the cost ceiling that I set out in November, but in a configuration preferred by the unions.[56]

The Government also agreed to retain the "fair deal policy":

> In the course of the talks, unions have stressed the importance of ensuring that their members will continue to be able to receive the benefits of their scheme if it is outsourced. That is the purpose of the fair deal policy, the future of which we have been consulting on. Because we have agreed to establish new schemes on a career average basis, I can tell the House that we have agreed to retain the fair deal provision and extend access for transferring staff. The new pensions will be substantially more affordable to alternative providers, and it is right that we offer workers continued access to them.[57]

There would be no further change for 25 years:

> I have made the commitment that these reforms will be sustained for at least 25 years. The Government intend to include provisions

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53 Ibid, c928 and c935
54 HM Treasury, Public Service Pensions: good pensions that last, Cm 8214, November 2011
55 HC Deb, 20 December 2011, c1201-03; HC Deb, 20 Dec 2011, c160-1WS
56 HC Deb, 20 December 2011, c1201-03
57 Ibid

> on the face of the forthcoming public service pensions Bill to ensure that a high bar is set for future Governments to change the design of the schemes.[58]

Further details were in a Written Statement.[59]

Proposed Final Agreement

On 9 March 2012, the Government published Proposed Final Agreements for the Teachers, NHS and Civil Service schemes. It said these delivered its "key objectives on linking Normal Pension Age to State Pension age and moving to schemes based on career average salary, while protecting those closest to retirement." The cost ceilings set on 2 November 2011 remained unchanged, with no additional money made available.[60] Detailed proposals for the Teachers' Pension Scheme were announced on 9 March 2012. The final scheme design was "conditional on acceptance of this proposed final agreement":

> *The Minister of State, Department for Education (Mr Nick Gibb):* On 20 December the Secretary of State for Education reported to the House on the heads of agreement on the teachers' pension scheme to be introduced in 2015, which set out the Government's final position on the main elements of scheme design. Since 20 December, Ministers have been engaged in detailed discussions with the teacher and lecturer unions over the remaining details of the teachers' pension scheme. I can now report to the House that discussions on these final details of the scheme design for the teachers' pension scheme to be introduced in 2015 have now concluded. The Government have made it clear this sets out our final position on scheme design, which unions agreed to take to their Executives as the outcome of negotiations. This includes a commitment to seek Executives' agreement to the cessation of any industrial action on pension reform. The final scheme design outlined is conditional on acceptance of this proposed final agreement.
>
> This proposed final agreement reflects the conclusion of discussions on the final details with teacher and lecturer unions since the Secretary of State made his written ministerial statement on pension reform, on 20 December 2011, *Official Report*, column 157WS. The headline elements of the proposed final agreement remain unchanged from those reached on 20 December.
>
> The core parameters of the new scheme are set out below:
>
> a. a pension scheme design based on career average;
>
> b. an accrual rate of 1/57th of pensionable earnings each year;
>
> c. revaluation of active members' benefits in line with CPI + 1.6%;
>
> d. normal pension age equal to state pension age, which applies both to active members and deferred members (new scheme service only). If a member's SPA rises, then NPA will do so too for all post-2015 service;

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58 Ibid

59 HC Deb, 20 December 2011, c157-8WS; See also Heads of agreement and GAD's verification of the proposals is here.

60 HM Treasury press release, Discussions conclude on public service pensions details, 9 March 2012

e. pensions in payment to increase in line with prices index (currently CPI);

f. benefits earned in deferment to increase in line with CPI;

g. average member contributions of 9.6%, with some protection for the lowest paid (subject to the detailed arrangements for determining future contribution structure, as shown in annex A of the proposed final agreement);

h. optional lump sum commutation at a rate of 12:1, in accordance with HMRC limits and regulations;

i. spouses/partner pension in accordance with current provisions;

j. lump sum on death in service of three times FTE salary;

k. ill-health benefits the same as those in the current open scheme;

l. actuarially fair early/late retirement factors on a cost-neutral basis except for those with a NPA above age 65 who will have early retirement factors of 3% per year for a maximum of three years in respect of the period from age 65 to their NPA;

m. an employer cost cap to provide backstop protection to the taxpayer against unforeseen costs and risks (as set out at paragraph 5 and annex B of the proposed final agreement);

n. the public sector transfer club will continue, and consideration will be given to the best method of operation in the reformed schemes;

o. phased retirement arrangements which reflect those in the current scheme, with the additional option of a third drawdown of benefits after a member's 60th birthday;

p. abatement will not apply to service in the reformed TPS. Abatement rules for the current scheme will remain unchanged;

q. members who leave the scheme and return within five years will have their accrued service in the current (NPA 60/65) scheme linked to their final salary at retirement; and

r. flexibilities to allow members to elect to pay a higher contribution rate in return for a higher accrual rate for a particular year, at full member cost, within existing limits on additional pension.

s. members who in the new scheme have a normal pension age higher than 65 will have an option in the new scheme to pay additional contributions to reduce or, in some cases, remove any early retirement reduction that would apply, if they retire before their normal pension age. Only reductions that would apply in respect of years after age 65 can be bought out and the maximum reduction that can be bought out is for three years (that would apply to a member with a normal pension age of 68 or higher).

The Government Actuary's Department has confirmed that this scheme design does not exceed the cost ceiling set by the Government on 2 November. Copies of the proposed final agreement and GAD verification have been deposited in the Libraries of both Houses.[61]

[61] HC Deb, 12 March 2012, c4-5WS

The detailed agreement is on the Gov.UK website: Teachers' Pension Scheme – Proposed Final Agreement.

The Pensions Policy Institute looked at the impact of the Governments reforms including:

- The increased member contributions which will increase by an average 3.2% for each scheme (except the Local Government Pension Scheme);
- The switch to a Career Average Revalued Earnings (CARE) scheme;
- The linking of the Normal Pension Age with the State Pension Age for the four largest schemes.

It assumed in its baseline that all public service pensions in payment were uprated in line with changes in the Consumer Prices Index (CPI). Its analysis suggested that the reforms reduced the average value of the benefit offered across all members of the teachers' pension schemes by more than a third: from 23% of a member's salary to 14%. The impact on individual members will vary, depending on factors such as their age and salary progression. The reforms will also reduce government expenditure on public service pensions.[62]

3.4 *Public Service Pensions Act 2013*

The *Public Service Pensions Act 2013*, which received Royal Assent on 25 April 2013, provides the framework for the reform of public service pension schemes from 2015 (2014 for local government). Key features of the Act are to:

- Enable the creation of new public service schemes, providing pensions based on career average rather than final salary;
- Link the normal pension age to the State Pension age (except in the schemes for the firefighters, police and armed forces, which would have a normal pension age of 60);
- Provide transitional protection for those 'closest to retirement';
- Introduce an "employer cost cap", to manage changes in cost should they breach a limit;
- Introduce new requirements for the management, regulation and administration of schemes;
- Introduce new common procedures for changing scheme rules in future, with enhanced requirements for certain changes made within 25 years of 2015, and for retrospective changes expected to have 'significant adverse affects' for scheme members;
- Extend access to public service schemes, to allow public service workers whose employment is compulsorily transferred to a new employer to retain membership of a public service scheme; and
- Add the new schemes to the list covered by the *Pensions Increase Act 1971,* so that same the arrangements apply for increasing

62 PPI, The implications of the Coalition Government's reforms for members of the public service pension schemes, October 2012

pensions in payment in the new schemes as apply to the existing schemes (i.e. annual increases in line with the CPI).

The background and debates on the legislation are discussed in more detail in: Library Research Paper RP 12/57 Public Service Pensions Bill (October 2012), RP 12/70 Public Service Pensions Bill – Committee Stage Report (November 2012) and SN 6572 Public Service Pensions Bill – Lords' Stages (April 2013).

Consultation on implementation

In May 2013, the Government published its consultation on proposals for implementation of the reformed Teachers' Pension Scheme in 2015. The response of the main teaching unions can be found on their websites. For example: NUT; ATL.

The Government published its response to the consultation on 13 September 2013. At the same time, it published draft regulations for consultation.[63] Regulations to introduce a new scheme for Teachers in England and Wales were laid before Parliament on 7 March 2014 – *The Teachers' Pension Scheme Regulations 2014 (SI 2014/512).*

Response of the trade unions

In January 2012, it was announced that the ATL and Association of School and College Leaders had accepted the Government's announcement for proposed reform of the Teachers' Pension Scheme in England and Wales. The *Guardian* reported that:

> The Association of Teachers and Lecturers (ATL), which represents 160,000 teachers, said the results of the poll showed that 91.6% of respondents had voted in favour. A second union, the Association of School and College Leaders (ASCL), announced it had accepted the outline "heads of agreement" after a survey of its members showed three-quarters were in favour of signing up, despite "huge anger" over the reforms. The association, which represents 16,000 secondary school and college leaders, said the agreement was not a final deal as a number of "significant" areas still had to be discussed. The ATL president, Alice Robinson, said: "ATL members are realists. They recognise how tough times are and that the government is determined not to give any further ground. Although the government's final offer does not give us everything we wanted, it is the best deal we could get in the current economic climate, and members do not want a significantly worse deal imposed on them if they rejected this one."[64]

In March 2012, the National Association of Head Teachers said it had "no further plans for action".[65]

However, the NUT, NASUWT, UCU and UCAC said they would campaign for further changes.[66] The NUT said:

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63 Draft Teachers' Pension Scheme Regulations 2014
64 'Teaching unions accept pensions deal', The Guardian January 2012
65 NAHT comments on government announcement that pensions talks have concluded
66 NASUWT, Pensions Latest, May 2012; NUT Pensions Campaign, Strike Action in London - 28 March, Key Facts for NUT Members; UCU press release 27 April 2012, 'UCU will join strike action and protests on 10 May'; UCAC website, Your pension under threat

> The Government says that negotiations are now at an end and it intends to impose a settlement. The NUT has been fully involved in those negotiations alongside other unions. The aim of our campaign remains to settle matters through negotiation. As a result of our strike action on 30 June and 30 November, the Government offered concessions. While these were welcome, they are not nearly enough. The Government is still asking teachers to pay a lot more and work a lot longer to get a lot less:
>
> - All teachers will still pay 50 per cent more on average for their pensions;
> - All teachers more than 10 years from their current pension age on 1 April 2012 will have to work longer for a full pension – for many, up to 68 or even more;
> - The move to the Consumer Prices Index (CPI) indexation will cut all teachers' pensions and the move to career average will affect almost everyone not given protection.
> - The Government has no justification for its proposals. It has not carried out the valuation of the Teachers' Pension Scheme, required by law, which would demonstrate the actual costs of our pensions. With no negotiation whatsoever, it implemented its changes in pension indexation from April last year, so that retired teachers have already lost out.[67]

In March 2013, the NUT and NASUWT wrote to the Education Secretary announcing an escalation of their joint action over pay, pensions and working conditions. They set out actions that could be taken to avert this, including publication of the "the valuation of the Teachers' Pension Scheme conducted on the basis of the 2010 criteria and factors and commit to genuine discussions on its findings."[68]

On 5 September 2013, the NUT and NASUWT announced the next phased of a joint campaign of industrial action over "adverse changes teachers' pay, pensions, working conditions and jobs".[69] NUT members in England and Wales took part in strike action on pay, pensions and conditions on 26 March 2014.[70] The NUT's position on pensions is summarised on its website.[71]

3.5 Negotiations in Scotland

Separate discussions were held between the Scottish Government and teaching unions. In March 2012, the Education Institute of Scotland said it would enter "formal discussions with the Scottish Government and local authorities regarding the future design of the Scottish Teachers Superannuation Scheme."[72] In March 2013, it said its members had given "overwhelming support to the prospect of further industrial

67 NUT Pensions Campaign, Strike Action in London - 28 March, Key Facts for NUT Members
68 NUT and NASUWT – letter to Michael Gove, 18 March 2013
69 NASUWT AND NUT CONFIRM NEXT PHASE OF INDUSTRIAL ACTION - press release 5 September 2013
70 BBC News, National teachers' strike: Schools shut across Wales
71 NUT, Teachers' Pensions; See also NASUWT Teachers' Pensions Latest
72 EIS, Strike action suspended – EIS to enter pensions discussions with Scottish Government; For more on public service pensions in Scotland, see Library Standard Note SN 05768 Public service pension reform – 2010 onwards

action to defend their pensions", should talks with the Scottish Government fail to reach agreement.[73] In October 2013, it said that negotiations around a "soft landing", in the form of lower rates of actuarial reduction for teachers retiring between 65 and State Pension age, had effectively been vetoed by the UK Treasury.[74]

Details of the Scottish Governments reforms, including a Framework Document setting out the features of the new scheme and consultation on draft regulations are on the 2015 Pension Reforms Archive on the SPPA website.

The Education Institute of Scotland (EIS) – which describes itself as the largest teaching union in Scotland – regretted the fact that the new scheme was almost identical to that for teachers in England and Wales:

> During negotiations through the Scottish Teachers' Pension Scheme Negotiating Group on new scheme arrangements, the EIS sought to minimise the actuarial impact on those who were being forced to work beyond 65 to the state pension age but who would choose to retire early. Regrettably, HM Treasury declined these proposals. Therefore, the Scheme adopted in Scotland, the Scottish Teachers' Pension Scheme 2015 (STPS 2015), is almost identical to the new Teachers' Pension Scheme which shall operate in England and Wales from that date.[75]

73 IES Members give overwhelming support to further pensions action, March 2013
74 EIS Update on Pensions – October 2013
75 EIS Scottish Teachers' Pension Scheme 2015 (website viewed as at 2017).

4. Reform issues

The basis for reform

One of the main arguments of the unions was that mechanisms had already been put in place – in the form of the Labour Government's "cap and share" arrangements.[76] They referred to the National Audit Office report which said:

> As a result of the changes, which are on course to deliver substantial savings, long-term costs are projected to stabilise around their current levels as a proportion of GDP. The changes are also set to manage one of the most significant risks to those costs, by transferring from taxpayers to employees additional costs arising if pensioners live longer than is currently projected.[77]

However, the Independent Public Service Pensions Commission set up by the Coalition Government concluded that public service pension schemes were not yet on a "fair and sustainable footing."[78] The then Prime Minister, David Cameron, said he thought the balance between the taxpayer and employee contribution was "getting massively out of kilter" and that "we need to rebalance the system."[79]

The teaching unions called for the Government to produce a valuation of the scheme, to show what was happening to costs.[80] A valuation to show the position of the scheme as at 2008 was expected.[81] However, along with other scheme valuations, it was put on hold pending a consultation on the discount rate used to set unfunded pension contributions, the results of which were announced in the March 2011 Budget.[82] The Government decided to postpone the next valuation until its proposed reforms were in place.[83]

The actuarial valuation of the scheme as at 31 March 2012 was published in June 2014. It specified the rate of employer contribution payable for the four-year period from 1 April 2015 (to be implemented from 1 September 2015) and the employer cost cap as required under section 12 of the 2013 Act.[84]

Scheme design

Lord Hutton's final report recommended that "a new career average revalued earnings (CARE) scheme should be adopted for general use in the public service schemes." It did not consider final salary schemes

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76 ATL Pensions Update, April 2011
77 NAO, The impact of the 2007-08 changes to public sector pensions, HC 662, 8 December 2010, p19
78 Independent Public Service Pensions Commission: Interim Report, 7 October 2010, foreword and p39
79 David Cameron – speech at the Local Government Association – 28 June 2011
80 Independent Public Service Pensions Commission: Interim Report, 7 October 2010, p45
81 Teachers' Pension Regulations 1997 *(SI 1997 No. 3001)*, regulation G4 and, from September 2010, Teachers' Pensions Regulations 2010 (SI 2010/990), regulation 128; GAD, 'The Teachers' Pension Scheme (England and Wales) Actuarial Review as at 31 March 2004. Report by the Government Actuary', November 2006
82 HM Treasury, Budget 2011, March 2011; See also HC Deb, 18 July 2011, c562
83 HC Deb, 2 November 2011, c937; See also HC Deb, 15 March 2012, c436W
84 GAD, Teachers' Pension Scheme. Actuarial valuation as at 31 March 2012. Report by the Scheme Actuary, 9 June 2014

provided the "right design for future public service schemes". This was because they exposed taxpayers to salary risk and created a barrier to employees moving from public to private sector.[85] The Government legislated for career average schemes in the 2013 Act but to protect accrued rights, which would be linked to final salary on leaving the scheme altogether.[86]

The ATL argued that the proposed shift from final salary to career average would "significantly reduce the benefits of leaders, teachers and support staff in retirement and […] impact the low paid hardest, typically women and part-time employees."[87]

The Government announced the core parameters of its proposed new scheme for teachers on 20 December 2011. It would provide pensions based on career average salary, with a provisional accrual rate of 1/57th of pensionable earnings a year and revaluation of active members' benefits in line with CPI + 1.6%.[88]

Normal pension age

Lord Hutton's final report recommended linking the normal pension age for future accruals, for members of most public service schemes, to their State Pension age:

> **Recommendation 11**: The Government should increase the member's Normal Pension Age in the new schemes so that it is in line with their State Pension Age. The link between the State Pension Age and Normal Pension Age should be regularly reviewed, to make sure it is still appropriate, with a preference for keeping the two pension ages linked.
>
> Ex.27 The introduction of the link to the State Pension Age, which will initially move Normal Pension Ages to 65, will move the proportion of adult life in retirement for public service pension scheme members back to about a third: roughly where it was in the 1980s. The current State Pension Age of 65 is already the Normal Pension Age for most new entrants to public service pension schemes. Moving to this for future accrual will more fairly distribute the benefits between scheme members. In the long term, the timetabled increases in State Pension Age should help to keep the proportion of adult life in retirement for members around this level, on current life expectancy projections.[89]

Under current legislation, the State Pension age (SPA) for women is increasing so that it reaches 65 in November 2018. The equalised SPA will then increase to 66 by October 2020. It will then increase to 67 between 2026 and 2028.[90] For the future, there will be periodic reviews of the SPA in the light of changes in life expectancy and other relevant factors. The first such review recommended that the increase to 68

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[85] Independent Public Service Pensions Commission: Final Report, 10 March 2011, p10
[86] *Public Service Pensions Act 2013*, s 8 and s20 and Sch 7
[87] ATL, Policy on pensions, 2011
[88] HC Deb, 20 December 2011, c157-8WS
[89] Independent Public Service Pensions Commission: Final Report, 10 March 2011, Executive summary
[90] *Pensions Act 1995*, Sch 4, as amended

should take place between 2037 and 2039.[91] This is discussed in more detail in Library Note SN 06546 State Pension age review (August 2017).

On 17 June 2011, Danny Alexander said that, as recommended by Lord Hutton and in response to increasing longevity, the Government was proposing to align the normal pension age in the new public service pension schemes (other than those for the uniformed services) with the State Pension age. Accrued rights would be protected, in terms of when you could draw them.[92] Section 10 of the Public Service Pensions Act 2013 provides for a link between the normal pension age and the State Pension age in the new scheme to be introduced in 2015.[93]

This was opposed by teaching unions. The NUT and NASUWT said:

> 16. The NASUWT and NUT oppose the provision that normal pension age should equal state pension age in the proposed TPS. We think it is unreasonable to expect teachers to be forced to work into their late 60s for a full pension. It would be completely unacceptable for teachers to be expected to work past their 70th birthday, as is perfectly foreseeable under the proposal for future reviews of the state pension age included in the current Pensions Bill. That proposal means that teachers will not be able to plan for the future with any certainty, as a Government decision to increase the state pension age would have a knock-on effect on all of their post-2015 occupational pension rights as well as their state pension rights.[94]

Fair Deal

The Fair Deal Policy builds on the requirements under a TUPE transfer for the occupational pension entitlements of these individuals, providing for a higher level of pension provision. It applies where:

- Public sector staff are compulsorily transferred to a new employer; and
- An outsourced public service where staff are transferred out under the Fair Deal policy in the past is re-tendered or returned to the public sector.[95]

As part of its agreement on reform of public service pension schemes, the Coalition Government said it would "retain the fair deal provision and extend access for transferring staff."[96] In a Written Statement of 4 July 2012, Chief Secretary to the Treasury, Danny Alexander, said this would mean all staff whose employment is compulsorily transferred from the public service under TUPE would retain membership of their current employer's pension arrangement:

> I can also confirm that the Government have reviewed the fair deal policy and agreed to maintain the overall approach, but deliver this by offering access to public service pension schemes

91 DWP, State pension age review, July 2017; State Pension age independent review: final report, John Cridland, March 2017
92 Danny Alexander, Speech to IPPR, 17 June 2011
93 Public Service Pensions Act 2013 – Explanatory Notes
94 NASUWT and NUT, Response to DfE consultation on proposals for implementation of the reformed Teachers' Pension Scheme in 2014, June 2013
95 HM Treasury, Fair Deal Policy: treatment of pensions on compulsory transfer of staff from the public sector, 3 March 2011
96 HC Deb, 20 December 2011, c1202-3 [Danny Alexander]

> for transferring staff. When implemented, this means that all staff whose employment is compulsorily transferred from the public service under TUPE, including subsequent TUPE transfers, to independent providers of public services will retain membership of their current employer's pension arrangements. These arrangements will replace the current broad comparability and bulk transfer approach under fair deal, which will then no longer apply. The Government will bring forward detailed proposals for implementing this in the autumn.[97]

The final agreement for reform of the Teachers' Pension Scheme said:

> 8. On the basis that this scheme design is agreed, the Government agrees to retain Fair Deal provision and extend access to public service pension schemes for transferring staff. This means that all staff whose employment is compulsorily transferred from maintained schools (including academies), higher and further education institutions under TUPE, including subsequent TUPE transfers, will still be able to retain membership of the Teachers' Pension Scheme when transferred. These arrangements will replace the current provisions for bulk transfers under Fair Deal, which will no longer apply. The Government's decision on Fair Deal means that, subject to agreement on scheme reform, independent schools which already have access to the Teachers' Pension Scheme will continue to do so (for existing and new teachers); and new teachers and independent schools will continue to be able to join the scheme under the existing qualifying criteria.[98]

In 2013, the Government consulted on whether Higher Education and Further Education institutions should be able to choose whether or not to apply the new Fair Deal when compulsorily transferring staff to another private sector employer. Teaching unions such as the NUT and the NASUWT argued that teachers in these institutions should "continue to have protection on their entitlement to a public service pension."[99] However, the Government decided Fair Deal would not be mandatory in the HE/FE sector. It said:

> 26. The majority of responses were broadly supportive of the proposals to accommodate the New Fair Deal arrangements into the TPS. The areas of concern that were raised are around the extension of the policy to the HE/FE sector and opinions are polarised on this subject depending upon whether the respondent represented employees or employers.
>
> 27. The Department recognises that there are concerns regarding whether New Fair Deal will apply in the HE/FE sector. However, that issue has been the subject of a separate consultation by HMT and HMT's guidance makes clear that these sectors are not required to apply NFD guidance, although they may do so, if they wish. The Department considers that the discussions and consultation that took place to develop this guidance fully explored this.

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97 HC Deb, 4 July 2012, c54WS

98 Department for Education, Teachers' Pension Scheme – Proposed Final Agreement, March 2012

99 NASUWT, HM Treasury Consultation on the new Fair Deal policy: Pension protection for staff employed by Higher Education and Further Education institutions who are eligible to be members of the Teachers' Pension Scheme or the Local Government Pension Scheme, 2 August 2013

> 28. The position taken by HMT is reflected in the TPS arrangements as these will facilitate those policy decisions. New Fair Deal will not be mandatory in the HE/FE sector but employers will be able to elect to apply the arrangements. HMT have also suggested a review after two year to re-consider the issue against numbers of HE/FE institutions that have elected to participate.[100]

Appropriate arrangements were made to the Teachers Pensions Regulations 2010 to give the proposed changes legal effect on 1 April 2014.[101]

Teachers in independent schools

Teachers in independent schools are eligible to be members of the Teachers Pension Scheme (TPS). The Independent Schools Council (ISC) explains that teachers in the vast majority of ISC schools[102] are members of the TPS and that this is important in aiding mobility between sectors:

> The terms for independent school teachers in the TPS are the same as for teachers in maintained schools, so that there are no difficulties in transferring between the maintained and independent sectors.[103]

Among the issues the Commission was asked to consider as part of its terms of reference were the "impact on labour market mobility between public and private sectors and pensions as a barrier to greater provision of public services" and "which organisations should have access to public service schemes."[104] In its interim report, published in October 2010, the Commission noted that some stakeholders had suggested that extending access to public service schemes to non-public sector employees would help to reduce the disadvantages faced by private sector and third sector organisations as a result of "Fair Deal". Fair Deal is a policy, introduced in 1999, to cover situations in which public sector employees are compulsorily transferred to a non-public sector employer. It requires the new employer to ensure that there is "broadly comparable" pension provision for future service and that there are options for the handling of existing accrued benefits. The Government recently conducted a review of the Fair Deal policy. The deadline for comments was 15 June 2011.[105]

The Commission noted that arrangements had been in place for some time in some public service schemes, including the TPS, to allow access to private sector employees:

> For instance, the NHS and teachers pension schemes have, for historic reasons, long had many private sector employees. In the case of the NHS, this is to cover General Practitioners working as

[100] DfE, Consultation on proposals for New Fair Deal and increases in contributions for members of the Teachers' Pension Scheme (TPS) in 2014/15 – Government response, March 2014

[101] Teachers Pensions (Amendment) Regulations 2014 (SI 2014/424)

[102] "ISC represents the eight leading independent schools associations in the UK, collectively educating more than 500,000 children in 1,260 schools in the UK and select British schools overseas. In total, there are around 2,600 independent schools in the UK." Independent Schools Council website – about us.

[103] ISC website – Teaching in an independent school - pay and benefits (viewed September 2012)

[104] Independent Public Service Pensions Commission: Interim Report, 7 Oct 2010, p133

[105] Library Briefing Paper SN 01665 TUPE and Pensions (June 2014)

> private sector practices. In the teachers schemes, it is principally to cover teachers in independent schools. The Local Government Pension Scheme has for the last decade offered admitted body status to facility pension arrangements for local authority workforces transferred to private sector contractors. In 2007 there were around 2,500 admitted bodies in the scheme, in addition to the 500 principal local authority employers. These admitted bodies employ about seven per cent of LGPS members.[106]

It commented that these arrangements carried risks to the taxpayer that could be managed, but not completely removed:

> 6.26 However, there are important arguments against widening the current provisions. Doing so would involve the Government bearing additional risks arising from pension liabilities accrued in the private sector. But the Government would have little control over the liabilities being accrued, since it would not set the wages of these employees.
>
> 6.27 Some of these risks can be managed. The Teachers' Pension Scheme requires indemnities from third party financial institutions as a condition of new admission for independent schools and its rules control pensionable pay increases in the final years. But such risks cannot be completely removed and evidence to the Commission suggests that many organisations cannot provide such indemnities. [107]

In its final report, the Commission examined in more detail the pros and cons of extending access to public service schemes (see pages 118-9). It concluded that it was in principle undesirable, but that, ultimately, it was for the Government to decide:

> Recommendation: It is in principle **undesirable for future non-public service workers to have access to public service pension schemes**, given the increased long-term risk this places on the Government and taxpayers (Recommendation 16).
>
> 5.59 The issues concerning access to public service pension schemes are complex and wide-ranging. Enabling access to public service schemes has clear pros and cons and it will ultimately be for the Government to consider how best to address these issues, in the light of its wider policy priorities.[108]

Responding, the Independent Schools Council (ISC)[109] called on the Government to ensure that independent school teachers could take part in any future public sector pension scheme:

> We hope that the government, in considering the recommendations, will take full account of the advantages of encouraging the two-way movement of teachers between the independent and state sectors. This promotes the exchange of best practice, while enriching the experience and developing the expertise of teachers. The ability for our teachers to enrol in the TPS plays an important part in this. ISC itself runs a teacher induction programme, ISCtip, licensed by the DfE, that inducts

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106 Independent Public Service Pensions Commission: Interim Report, 7 Oct 2010, para 6.24
107 Ibid
108 Independent Public Service Pensions Commission: Final Report, 10 March 2011
109 The ICS describes itself as "the umbrella body representing 1,234 independent schools educating more than 500,000 children in the UK, Ireland and overseas." (Ref: http://www.isc.co.uk/AboutUs_WhatisISC.htm_)

> over 1000 newly qualified teachers per year, many of whom teach in the state sector at some point in their careers. Independent schools and teachers have always paid their full contributions to the TPS. We believe that, provided public sector pensions schemes are set up sustainably, there should be no additional risk to government by including independent school teachers in a new TPS. Indeed in a well-run scheme additional participants will make a positive contribution of benefit to all."[110]

The ATL said that "all individuals working as teachers, or who have an element of teaching as part of their job description, should be allowed to join the TPS", arguing that it "clearly aids the mobility of staff" between the maintained and private sector.[111] The NUT said:

> The Government is consulting before taking a firm position on the recommendation. The NUT has stated the view that teachers in independent schools should continue to be eligible for the scheme.[112]

On 2 November 2011, the Chief Secretary to the Treasury said:

> Harriett Baldwin (West Worcestershire) (Con)**:** [...] Many teachers in my constituency work in the state sector, but over their careers they will often spend periods in the independent sector too. Will the proposals continue to allow inter-changeability between the two sectors?
>
> Danny Alexander: If agreement is reached, they will. The arrangements that the hon. Lady describes are an important part of the discussions, but they depend on reaching a sustainable agreement on the future of public service pensions along the lines I have set out.[113]

The Proposed Final Agreement published in March 2012 said:

> The Government's decision on Fair Deal means that, subject to agreement on scheme reform, independent schools which already have access to the Teachers' Pension Scheme will continue to do so (for existing and new teachers); and new teachers and independent schools will continue to be able to join the scheme under the existing qualifying criteria.[114]

The Public Service Pensions Act 2013 enables pension provision to be made for people not in the public service.[115] The details of the types of 'eligible employment' for the purpose of the Teachers' Pension Scheme 2015 are SI 2014/512, Sch 1 .

As discussed above, the Government is currently considering allowing independent schools to withdraw from the scheme.

110 ISC response to Hutton report: public pension schemes should stay open to independent teachers, 10 March 2011: :
111 ATL's policy on pensions (viewed November 2012)
112 NUT, Reasons for NUT action – key facts for NUT members
113 HC Deb, 2 November 2011,c932
114 DfE, Teachers' Pension Scheme – Proposed Final Agreement, March 2012
115 Public Service Pensions Bill – Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee prepared by HM Treasury, (revised version, 4 October 2012); Public Service Pensions Act 2013- Explanatory Notes

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